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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/773,894	02/06/2004	David J. Edmondson	1643.104	8329
52529	7590	07/17/2006	EXAMINER	
SCHEEF & STONE, L.L.P.			NELSON, FREDA ANN	
5956 SHERRY LANE				
SUITE 1400			ART UNIT	
DALLAS, TX 75225			PAPER NUMBER	
			3639	

DATE MAILED: 07/17/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/773,894	Applicant(s) EDMONDSON ET AL.	
	Examiner Freda A. Nelson	Art Unit 3639	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 June 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,5-15 and 18-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,5-15 and 18-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

The amendments received on June 8, 2006 is acknowledged and entered. Claims 1, 5-6, 15, and 18- have been amended. Claims 3-4 and 16-17 have been canceled. No claims have been added. Claims 1-2 and 5-15, and 18-20 are currently pending.

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on June 20, 2006 has been entered.

Response to Amendments and Arguments

Applicant's arguments filed June 8, 2006 have been fully considered but they are not persuasive.

In response to applicant's arguments that Eglan et al. fail to disclose how the content files are initially priced, the examiner respectfully disagrees. Eglan et al. disclose that alternatively or additionally, the dynamic pricing system 102 in this and other embodiments can automatically set the initial price based on default prices and/or historical prices for similar content stored in memory 112 (paragraph [0123]).

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 20 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 20 is currently dependent on previously canceled claim.

Claim Rejections - 35 USC § 102

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 1-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Eglan et al. (US PG Pub. 2003/0023505).

As for claims 1 and 7-8, Eglan et al. disclose an apparatus for associating a price indicia with each of the first content file and at least a second content file stored at a content database of a content distribution facility, each of the first and at least second content files authored by content creators, said apparatus comprising:

a content creator database forming an author index that indexes a listing of content creators together with historical indicia associated with the content creators (paragraphs [0063],[0065])
an initial price indicia associator adapted to receive content indicia associated with each of the first and at least second content files stored at the content database and adapted to access said content creator database, said initial price indicia associator for initially pricing each of the first and at least second content files with initial price indicia, the initial price indicia formed responsive to the historical indicia indexed at said content creator database and identifying historical demand for content files authored by the content creators indexed together therewith (paragraphs, [0059]-[0060],[0136]) { the music databases 230 can
store the file name of a song, the location of the file on the home music server 220, song title, artist, author, producer, distributor (label), album name, album picture, picture of the artist, musical category (i.e. rock, jazz
. . .), description, comments, pricing information, demand information, and/or length/size of the song along with other information relating to the song};

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a price indicia adjuster adapted to receive indications of the initial price indicia that said initial price indicia associator associates with each of the first and at least second content files and to receive indications of demand for each of the first and at least second content files, said price indicia adjuster for adjusting the initial price indicia responsive to the demand therefore and for forming adjusted price indicia associated with each of the first and at least second content files (abstract; paragraphs [0058], [0099]) {the system dynamically adjusts pricing of the media content and delivers the media content to the clients that order the media content at a dynamically adjusted price; all requests for the song are initially placed with the "home" music server 220, which is the second music server 220b in this example, and if the second, home music server 220b is unable to process a request for the song, the second music server 220b redirects the request to one of the other music servers 220 that has a copy of the song, which in this case is the first music server 220a; during initialization of the dynamic pricing system 102, a song is loaded from the master file server 214 onto the second music server 220b, which becomes the "home" music server 220 for this particular song and as the song becomes popular, the second music server 220b can place a copy of the file containing the song onto the first music server 220a so as to optimize performance of the dynamic pricing system 102; and all requests for the song are initially placed with the "home" music server 220, which is the second music server 220b in this example, and if the second, home music server 220b is unable to process a request for the song, the second music server 220b redirects the request to one of the other music servers 220 that has a copy of the song, which in this case is the first music server 220a}.

As for claim 2, Eglan et al. disclose the apparatus of claim 1, wherein the content indicia associated with each of the first and at least second content files comprise identifiers that identify the content creators of the first and at least second content files, respectively (paragraph [0060]) {the music databases 230 can store the file name of a song, the location of the file on the home music server 220, song title, artist, author, producer, distributor (label), album name, album picture, picture of the artist, musical category (i.e. rock, jazz . . .), description, comments, pricing information, demand information, and/or length/size of the song along with other information relating to the song}.

As for claims 4-6, Eglan et al. disclose the apparatus of claim 1 wherein the historical indicia responsive to which said initial price indicia associator initially prices the first and at least second content files identifies historical demand for content files authored by the content creators indexed together therewith (paragraphs [0064], [0123]) {pricing algorithm parameters field 352 can store information such as the historical pricing and quantity ordered information for the item; and alternatively or additionally, the dynamic pricing system 102 in this and other embodiments can automatically set the initial price based on default prices and/or historical prices for similar content stored in memory 112}.

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As for claims 9-13, Eglan et al. disclose the apparatus of claim 8 wherein the inquiries relating to the purchase of the copies of the individual ones of the first and at least second content files comprise indications of purchase requests made by the content consumers (paragraph [0122]) {the dynamic price modifier increases the price of an item when demand for that item increases and reduces the price of an item when the demand for the item decreases and in one form, the dynamic pricing modifier is based on the differences between the quantity ordered at specific intervals wherein, for instance, these intervals can be by second, by minute, hourly, daily, monthly, or yearly; and in another form, the dynamic pricing modifier is based on the time between successive purchases; for example, if the time delay between successive purchases decreases, the dynamic pricing system 102 can infer that demand is increasing and thus increase the price for the item}.

As for claim 14, Eglan et al. disclose the apparatus of claim 1 further comprising a revenue allocator adapted to receive the indications of demand, said revenue allocator for allocating revenues associated with the first and at least second content files (paragraph 0158; FIG. 30E and FIG. 31) {the owner of the dynamic pricing system 102 generates revenue by receiving a portion of the revenue generated by the sale of items on the dynamic pricing system 102}.

As for claims 15 and 19, Eglan et al. disclose that in an initial time period ($t=1$), an initial price for an item is set; wherein for example, the initial price of a song could be set to 90 cent (\$0.90), depending on whatever the content supplier and/or the administrator using administrative computer 104 believes is appropriate and in this particular example, $P_{sub.1} = \$0.90$; and in the second time period ($t=2$), the processor 110 of the dynamic pricing system 102 changes the price in order to get a sample of the change in client demand at a differing price levels (paragraph 0099); and the system dynamically adjusts pricing of the media content and delivers the media content to the clients that order the media content at a dynamically adjusted price (paragraphs [0059]-[0060]); abstract).

As for claim 18, Eglan et al. disclose the method of claim 16 wherein copies of the first content file and the at least the second content file each are at least selectably available for delivery to content consumers and wherein the indications of the demand for each of the first and at least second content files comprise indications of requests made by the content consumers comprise indications related to at least requests for copies of selected ones of the first and at least second content files (paragraph [0053]) {with customer devices 124, consumers can purchase and download content from the dynamic pricing system 102 wherein consumers can view, listen to and/or interact with the content they purchased with customer devices 124; and for example, when the customer device 124 is a personal computer, the personal computer can be used to store compressed digital media musical content, such as MP3 files and the personal computer then can be used to play, store, and/or "burn" CDs with music from the MP3 files}.

As for claim 20, Eglan et al. disclose the method of claim 17 wherein adjustments to the adjusted price indicia during said operation of adjusting are performed incrementally (paragraph [0122]).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Freda A. Nelson whose telephone number is (571) 272-7076. The examiner can normally be reached on Monday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Hayes can be reached on 571-272-6708. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

FAN 07/08/2006

Freda Nelson

John Hayes
JOHN W. HAYES
SUPERVISORY PATENT EXAMINER